



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

March 27, 2009

VIA EMAIL AND CERTIFIED MAIL

Ms. Alice C. Williams, Manager
U.S. Department of Energy
National Nuclear Security Administration
Lawrence Livermore National Laboratory
Livermore Site Office
P.O. Box 808, L-293
Livermore, CA 94551-0808

Re: Settlement of Dispute and Stipulated Penalties for Violations of the CERCLA
Section 120 Federal Facility Agreement (FFA) at Lawrence Livermore
National Laboratory (LLNL), Livermore Site

Dear Ms. Williams:

This confirms the agreement between the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (DOE) regarding settlement of a dispute and stipulated penalties for DOE's violations of the Lawrence Livermore National Laboratory (LLNL) Livermore Site Federal Facilities Agreement (FFA), signed in 1988 by DOE, EPA, the Toxic Substances Control Division of the California Department of Health Services (i.e., Department of Toxic Substances Control (DTSC)), and the California Regional Water Quality Control Board, San Francisco Bay Region (RWQCB). EPA provided DOE notice of the violations in its letter to the Livermore Site Office (LSO) Manager, Alice C. Williams, on January 6, 2009. DOE has agreed to resolve this dispute by: (i) paying the stipulated penalty described below; (ii) implementing the schedule it provided to EPA on February 24, 2009 (via email from Phil Wong, DOE program manager, to Kathy Setian, EPA project manager, and attached hereto); and (iii) agreeing to provide biweekly updates to EPA, DTSC and RWQCB, as described below.

In consideration of the information DOE presented to EPA during the informal period to resolve this dispute, as well as DOE's revised schedule for restarting systems it has shut down, EPA has revised its prior penalty assessment and has assessed a penalty of **\$165,000** against DOE. Consistent with Section XXXIII of the FFA, the \$165,000

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stipulated penalty constitutes \$5,000 for the first week of noncompliance with the FFA, and \$10,000 for each additional week thereafter. DOE's payment of \$165,000, its compliance with the attached schedule, and its agreement to provide biweekly status updates and comply with the other terms of this letter of agreement, fully settles this matter.

EPA has reviewed and concurs with the attached schedule for addressing the shuttered treatment facilities. This schedule is enforceable under the FFA. To incorporate this schedule into the FFA, DOE must, within 10 days from the date of this letter, prepare for signature by the EPA, DTSC and RWQCB remedial project managers (RPMs) a new Consensus Statement and a revised Table 5 (*Schedule for LLNL Remedial Designs and Remedial Actions*), consistent with the attached schedule commitments. Under Section VIII.C of the FFA, DOE must implement Site remedial actions in accordance with this approved schedule, which will be incorporated into the Remedial Action Implementation Plan. A failure to meet this schedule could result in further stipulated penalties against DOE unless DOE requests and receives an extension in accordance with Section XIX of the FFA.

DOE also shall provide the RPMs with written updates to the spreadsheet entitled "*Livermore Treatment Facility Status as of [date]*", on a biweekly basis, so that the RPMs can monitor the progress of restarting the treatment facilities.

In the future, if DOE determines that (i) changed conditions in an area of contamination may necessitate a change to a selected remedial action or any remedial design/remedial action document, and/or (ii) a selected remedial action is no longer functioning as intended, DOE should present its findings in writing to the RPMs and shall seek and obtain written approval of all RPMs prior to making a change to the remedy selected.

In its next budget request to Congress, DOE shall seek an appropriation from Congress in the amount of \$165,000 for the purpose of paying the stipulated penalty, and for EPA to deposit such amount in the LLNL Main Site Special Account with the EPA Hazardous Substance Superfund, to be retained and used to conduct, finance or oversee response actions at or in connection with the LLNL Main Superfund Site, or to be transferred to the EPA Hazardous Substance Superfund. A Special Account is a sub-account within the Hazardous Substance Superfund, authorized by CERCLA Section 122(b)(3), 42 U.S.C. § 9622(b)(3).

DOE shall remit to EPA a check for \$165,000 or transfer the payment electronically as follows:

- a) If DOE determines that it may remit payment to EPA prior to obtaining an authorization and appropriation from Congress, DOE shall remit payment within thirty (30) calendar days of receipt of this letter; or

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- b) If DOE determines that it must obtain an authorization and appropriation from Congress prior to making the payment, DOE shall remit payment within thirty (30) calendar days of the DOE/NNSA Livermore Site Office's receipt of funds appropriated by Congress.

If payment is made by check, the check should be made payable to the U.S. EPA Hazardous Substance Superfund. Instructions for electronic submission of your payment are below. The check and accompanying transmittal letter should clearly reference the identity of the Site (i.e., Lawrence Livermore National Laboratory Main Site) and the fact that the payment is a stipulated penalty, and should be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

or, for overnight delivery, to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

For electronic funds transfers, please send to the following address:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Please send a copy of the check and transmittal letter to Steve Berninger at:

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, (ORC-3)

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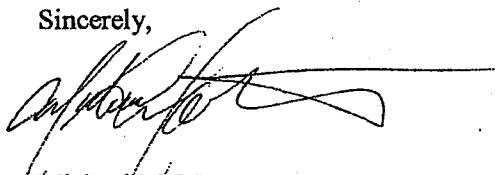
San Francisco, CA 94105
(415) 972-3909

The agreement between DOE and EPA as set forth in this letter concludes the dispute resolution procedures related to the action and the assessment of the stipulated penalty. Please indicate DOE's agreement with the terms described herein by signing this letter of agreement in the signature area below, and return it to me at:

Michael Montgomery
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, (SFD-8)
San Francisco, CA 94105

If you have any questions concerning the terms of this agreement, please contact me at (415) 972-3438, or have your staff contact Kathy Setian at (415) 972-3180. Any legal questions should be directed to Steve Berninger at (415) 972-3909.

Sincerely,



Michael M. Montgomery
Assistant Director, Superfund Division

Agreed to and approved by:

United States Department of Energy



Name: Alice C. Williams

Title: Mgr, Livermore Site Office

Date: March 31, 2009

cc: Ms. Agnes Farres, RWQCB
Mr. Jacino Soto, DTSC

Livermore Treatment Facility Restart Milestone Schedule (February 24, 2009)

Treatment Facility	Treatment Unit	Facility Type	Projected Restart	Restart Milestone	Other Milestones
TFE East	MTU1	GWTS	3/2/2009	6/30/2009	
TFD South	PTU2	GWTS	3/6/2009	6/30/2009	
VTf406 Hotspot	VES08	SVTS	3/9/2009	3/31/2009	
TFD		GWTS	4/13/2009	6/30/2009	
TFE Southeast	MTU04	GWTS	4/20/2009	6/30/2009	
TF406 Northwest	GTU03	GWTS	5/4/2009	6/30/2009	
TF54/75-2	GTU09	GWTS	5/11/2009	6/30/2009	Submit schedule for facility upgrades by 9/30/2009
VTf611	VES14	SVTS	5/12/2009	6/30/2009	
TFE East	PTU3	GWTS	5/18/2009	9/30/2009	
VTfE ELM	VES16	SVTS	6/9/2009	9/30/2009	
TFG North	MTU02	GWTS	7/6/2009	9/30/2009	
VTfD ETC South	VES11	SVTS	7/7/2009	9/30/2009	
VTfE Hotspot	VES12	SVTS	7/27/2009	9/30/2009	
VTfD Hotspot	VES13	SVTS	8/5/2009	9/30/2009	
TFD Helipad	PTU10	GWTS	10/5/2009	12/31/2009	Submit schedule for bioremediation treatability test by 9/30/2009
VTfD Helipad	VES07	SVTS	10/12/2009	12/31/2009	Submit schedule for bioremediation treatability test by 9/30/2009
TF518-PZ	HDTANK	GWTS	11/16/2009	12/31/2009	Submit schedule for facility upgrades by 9/30/2009
VTf518-PZ	VES19	SVTS	TBD	3/31/2010	Submit schedule for facility upgrades by 9/30/2009

Livermore Treatment Facility Restart Milestone Schedule (February 24, 2009)

Treatment Facility	Treatment Unit	Facility Type	Projected Restart	Restart Milestone	Other Milestones
TF518 North	STU09	GWTS	TBD	TBD	Present summary of mixed waste management efforts by 4/30/2009. Submit schedule for focused feasibility study by 9/30/2009
TF5475-1	CRD1	GWTS	TBD	TBD	Present summary of mixed waste management efforts by 4/30/2009. Submit schedule for focused feasibility study by 9/30/2009
TF5475-3	CRD2	GWTS	TBD	TBD	Present summary of mixed waste management efforts by 4/30/2009. Submit schedule for focused feasibility study by 9/30/2009
VF5475	VES01	SVTS	TBD	TBD	Present summary of mixed waste management efforts by 4/30/2009. Submit schedule for focused feasibility study by 9/30/2009
TFA West	LWRP	GWTS			Prepare treatability study summary report with cleanup alternatives by 9/30/2009.

Livermore Treatment Facility Restart Milestone Schedule (February 24, 2009)

Treatment Facility	Treatment Unit	Facility Type	Projected Restart Milestone	Other Milestones
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Notes:

GWTS = Ground Water Treatment System.

IPOD = Integrated Project Document.

REVAL = Remediation Evaluation.

SVTS = Soil Vapor Treatment System.

Date Stopped = Last day of normal operations.

Projected Restart = Projected date that operations and testing will start. (Day Only Operations on Gantt chart)

Restart Milestone = Agreed to date by which facility will restart

Other Milestones = Other agreed upon milestones not involving restarting a facility (i.e., submitting facility upgrade schedules, feasibility study